



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-1008]

RIN 1625- AA00

Safety Zone; Witt-Penn Bridge Construction, Hackensack River; Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the Hackensack River surrounding the Witt-Penn Bridge between Jersey City and Kearny, NJ. In response to a planned Witt-Penn Bridge construction project, this rule allows the Coast Guard to prohibit all vessel traffic through the safety zone during bridge replacement operations that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life in the vicinity of the construction of the Witt-Penn Bridge.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2014-1008 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Coast Guard Sector New York; telephone (718) 354-4195, or e-mail jeff.m.yunker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port New York
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
NJ DOT	New Jersey Department of Transportation
NPRM	Notice of Proposed Rulemaking

II. Background Information and Regulatory History

On April 7, 2011 the Coast Guard issued a Bridge Permit approving the location and construction of the Witt-Penn Bridge across the Hackensack River, mile 3.1, between Kearny and Jersey City, NJ. The Coast Guard published a Solicitation of Comments from NJ DOT in the First Coast Guard District Local Notice to Mariners #16 (April 23, 2014) through #20 (May 21, 2014). This solicitation requested comments regarding impacts to navigation from NJ DOT's proposed tentative channel closures/restrictions.

On June 26, 2015, we published an NPRM titled Safety Zone; Witt-Penn Bridge Construction, Hackensack River; Jersey City, NJ in the Federal Register (80 FR 36733). We invited comments on our proposed regulatory action related to the bridge construction project. During the comment period that ended August 25, 2015, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5 Department of Homeland Security Delegation No. 0170.1. The COTP has determined that potential hazards associated with bridge construction will

be a safety concern for anyone within approximately 500 feet of the Witt-Penn Bridge. The purpose of this rule is to ensure the safety of vessels and workers from hazards associated with construction of the replacement Witt-Penn Bridge and the follow-on demolition of the current Witt-Penn Bridge.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published June 26, 2015. We received one comment regarding nurse infection control in a rural area in the State of Missouri. This is outside the purview of this rulemaking. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The safety zone will cover all navigable waters within approximately 500 feet of the Witt-Penn Bridge (river mile 3.1) on the Hackensack River between Jersey City and Kearny, NJ. The duration of the zone, one to 21 days, is intended to ensure the safety of life and vessels during bridge construction and demolition operations. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and E.O.s related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that

maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the safety zone will be limited to the Hackensack River area, closures will be of a limited duration (one to 21 days), and waterway users have already been notified of the proposed closures through the Local Notice to Mariners. Moreover, the Coast Guard will issue advanced public notifications to local mariners through appropriate means, which may include but are not limited to marine broadcasts or Local Notice to Mariners which would allow the public an opportunity to plan for these closures.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996

(Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian

tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting between one and 21 days that will prohibit entry within approximately 500 feet of the Witt-Penn Bridge. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.162 to read as follows:

§165.162 Safety Zone; Witt-Penn Bridge Construction, Hackensack River, Jersey City, NJ.

(a) **Location.** The following area is a safety zone: All waters from surface to bottom of the Hackensack River bound by the following approximate positions: North of a line drawn from 40°44'27.4"N., 074°05'09.8"W. to 40°44'22.9"N., 074°04'53.1"W. (NJ PATH Bridge at mile 3.0), and south of a line drawn from 40°44'33.2"N., 074°04'51.0"W. to 40°44'28.2"N., 074°04'42.7"W. (500 feet north of the new Witt-Penn Bridge) (NAD 83).

(b) **Definitions.** The following definitions apply to this section:

(1) **Designated representative.** A “designated representative” is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP) to act on his or her behalf. A designated representative may be on an

official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official patrol vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(c) Enforcement periods. (1) This safety zone is in effect permanently starting [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], but will only be enforced when deemed necessary by the COTP.

(2) The Coast Guard will rely on the methods described in §165.7 to notify the public of the time and duration of any closure of the safety zone. Violations of this safety zone may be reported to the COTP at 718-354-4353 or on VHF-Channel 16.

(d) Regulations. (1) The general regulations contained in §165.23, as well as paragraphs (d)(2) and (3) of this section, apply.

(2) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or a COTP's designated representative.

(3) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed.

Dated: November 6, 2015.

M. H. Day,
Captain, U.S. Coast Guard,
Captain of the Port New York.

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